

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

vs.

ATTORNEY AFFIDAVIT

XAVIER TORRES a/k/a Pistolita,
Defendant.

Maurice J. Verrillo, being duly sworn, deposes and says that:

1. I am an attorney admitted to practice law in the Western District of New York.
2. I am the assigned counsel, for the defendant, Xavier Torres.
3. I execute this affidavit in support of our request for relief set forth in the Notice of Motion.
4. Upon information and belief, Mr. Torres resided on Burbank Street during the period from February 2015 to November 2015. The defendant was arrested on February 6, 2016 during a stop on Burbank Street; the defendant is also accused of involvement in the John Gonzalez homicide in Buffalo in June 2016.
5. The government is seeking to admit evidence relative to subsequent evidence as to which the government seems to concede the lack of participation, or involvement of Mr. Torres in these events.
6. These events include:
 - a. Controlled buy on June 2, 2016.
 - b. Controlled buy on June 3, 2016.
 - c. Controlled buy on June 6, 2016.

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- d. Seizure at 16 Laforce Street on July 31, 2016.
 - e. Seizure at 54 Miller Street on December 8, 2016.
 - f. Controlled buy on September 21, 2017.
 - g. Controlled buy on November 20, 2017.
 - h. Seizure at 4 Ritz Street on January 29, 2018.
 - i. Seizure at 292 Barrington Street on January 29, 2018.
 - j. Seizure at 15 Burbank Street on January 29, 2018.
 - k. Seizure at 820 E. Main Street, Apt. 14 on January 29, 2018.
7. These areas of inquiry are not relevant to any alleged conduct of Mr. Torres.
8. None of the events listed in paragraph "6" have any relationship or alleged involvement of Mr. Torres.
9. FRE 401 provides that
- Evidence is relevant if:
- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
 - (b) the fact is of consequence in determining the action.
10. FRE 403 permits this court to exclude evidence for various reasons, including:
- A. confusing
 - B. misleading.
 - C. cumulative
 - D.. causing undue delay or wasting the court's time

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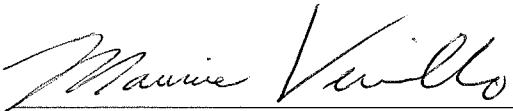
11. Any possible relevance to Mr. Torres is substantially outweighed by the presentation of evidence in which the defendant had no role or involvement.
12. The existence of subsequent facts does not make it more or less probable as to Mr. Torres alleged involvement in this conspiracy during the applicable time periods. United States v. Bert Lancaster, 96 F.3d 734 ,744 (4th Cir. 1996) (noting subsequent assault by victim's cousin, 3 days after assault was irrelevant to events associated with original assault incident).
13. The admission of subsequent evidence "does not make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". United States v. Frick, 588 F.2d 531,537 (5th Cir. 1979) citing FRE 401.
14. The defendant respectfully contends that the subsequence evidence offered by the government is not relevant in determining whether or not Mr. Torres participated in a drug conspiracy; any possible relevance is substantially outweighed by the jury being exposed to evidence as to which the defendant had no involvement thereby prejudicing his right to a fair trial.

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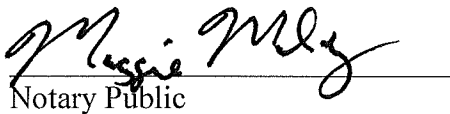
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WHEREFORE, the defendant Xavier Torres respectfully requests that this Court exclude or restrict the use of subsequent evidence at this trial together with such other and further relief to this Court seems just and proper.



Maurice J. Verrillo

Sworn to before me this 21st day of
September, 2021.


Notary Public

MAGGIE MALOY
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01MA6388343
Qualified in Monroe County
Commission Expires on March 04, 2023

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